

February

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
KAISER ALUMINUM & CHEMICAL
CORPORATION and SEATTLE
STEVEDORE COMPANY,

Appellants,

v

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB Nos. 1079 and 1085

ORDER GRANTING
MOTION TO VACATE

These consolidated matters, appeals of a civil penalty (\$250.00) issued against appellants for failure to take reasonable precautions with particulate matter in violation of Regulation I, § 9.15(a) came on for formal hearing before the Pollution Control Hearings Board (W. A. Gissberg, presiding, and Chris Smith) at Lacey, Washington on February 10, 1977.

Appellant Kaiser Aluminum & Chemical Corporation was represented by Edward M. Lane; Jack P. Hogan, Director of Safety, represented

1 appellant Seattle Stevedore Company; respondent Puget Sound Air
2 Pollution Control Agency was represented by its attorney Keith D.
3 McGoffin.

4 At the close of respondent's testimony, appellant Kaiser Aluminum
5 & Chemical Corporation, joined by appellant Seattle Stevedore Company,
6 moved to dismiss the notice of violation and civil penalty on two
7 grounds:

8 1) The agency, having the burden of establishing the violation,
9 did not connect appellant Kaiser Aluminum & Chemical Corporation in any
10 way with the subject emission, and

11 2) The agency did not establish all the necessary elements of
12 the section of the regulation allegedly violated, i.e., it did not prove
13 that the observed emission was particulate matter and not uncombined
14 water.

15 Under the Board's rule, WAC 371-08-180(2) the agency imposing a
16 civil penalty first proceeds with its case-in-chief. A prima facie
17 case of violation must be established.

18 Regulation I, Section 9.15(a) provides:

19 It shall be unlawful for any person to cause
20 or permit particulate matter to be handled,
21 transported or stored without taking reasonable
precautions to prevent the particulate matter
from becoming airborne. . . .

22 While Kaiser's relationship with the alumina was not established,
23 evidence was presented that appellant Seattle Stevedore Company was
24 responsible for the handling of the alumina stored in the holds of the
25 subject ship, SHOBU MARU.

26 Evidence was also offered by respondent that alumina as a substance

27 ORDER GRANTING
MOTION TO VACATE

1 can be particulate matter within the definition of Regulation I, Section
2 1.07(w):

3 . . . "Particulate matter" means any material,
4 except water in an uncombined form, that is or
5 has been airborne and exists as a liquid or a
solid at standard conditions. . . .

6 No evidence was presented by respondent that the emission observed
7 by the agency's inspector rising from the hold of the ship was particulate
8 matter, i.e., alumina, and was not water in an uncombined form.

9 The agency having failed to establish a prima facie case, appellants'
10 Motion to Vacate the notice of violation and civil penalty is granted.

11 Had the agency been able to establish that an airborne emission was
12 composed of particulate matter, the subject substance alumina, and
13 not water in an uncombined form, a prima facie case that a particulate
14 matter was being handled or stored without taking reasonable precautions
15 to prevent its becoming airborne would have been established. That is,
16 once an airborne emission of particulate matter is shown to exist, the
17 burden of proceeding with evidence shifts to the appellant to show that
18 reasonable precautions had nonetheless been taken to prevent such emissions

19 ORDER

20 The Notice of Violation No. 12417 and the Notice of Civil Penalty
21 No. 2942 are vacated.

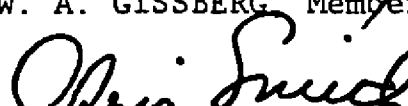
22 DATED this 22^d day of February, 1977.

23 POLLUTION CONTROL HEARINGS BOARD

24 (Did not participate)
25 ARTHUR BROWN, Chairman

26 
27 W. A. GISSBERG, Member

ORDER GRANTING
MOTION TO VACATE


CHRIS SMITH, Member

1 CERTIFICATION OF MAILING

2 I, LaRene Barlin, certify that I deposited in the United States
3 mail, copies of the foregoing document on the 22^d day of
4 February, 1977, to each of the following-named parties at the last
5 known post office addresses, with the proper postage affixed to the
6 respective envelopes.

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14 Mr. Jack P. Hogan
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21 

22 LARENE BARLIN
23 POLLUTION CONTROL HEARINGS BOARD

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25
26
27 ORDER GRANTING
 MOTION TO DISMISS